

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Phyllis Davis,

Plaintiff,

vs.

Michael J. Astrue,
Commissioner of Social Security,

Defendant.

Civil Action No. 6:11-1752-CMC-KFM

REPORT OF MAGISTRATE JUDGE

This case is before the court for a report and recommendation pursuant to Local Civil Rule 73.02(B)(2)(a) DSC, concerning the disposition of Social Security cases in this District, and Title 28, United States Code, Section 636(b)(1)(B).¹

The plaintiff brought this action pursuant to Sections 205(g) and 1631(c)(3) of the Social Security Act, as amended (42 U.S.C. 405(g) and 1383(c)(3)), to obtain judicial review of a final decision of the Commissioner of Social Security denying her claims for disability insurance benefits and supplemental security income benefits under Titles II and XVI of the Social Security Act.

PROCEDURAL HISTORY

The plaintiff filed applications for disability insurance benefits and supplemental security income benefits on April 15, 2008, alleging that she became unable to work on June 30, 1998. The applications were denied initially and on reconsideration by the Social Security Administration. On September 18, 2008, the plaintiff requested a hearing. The administrative law judge ("ALJ"), before whom the plaintiff and J. Adger Brown, Jr., an impartial vocational expert, appeared on June 8, 2010, considered the case

¹A report and recommendation is being filed in this case, in which one or both parties declined to consent to disposition by the magistrate judge.

de novo, and on June 23, 2010, found that the plaintiff was not under a disability as defined in the Social Security Act, as amended. The ALJ's finding became the final decision of the Commissioner of Social Security when it was approved by the Appeals Council on June 1, 2011.

The plaintiff filed this action for judicial review on July 20, 2011. On February 27, 2012, the plaintiff filed a brief in support of her case. On April 4, 2012, the defendant moved this court to enter a judgment with an order of reversal and remand of the cause to the Commissioner for further administrative proceedings. Under sentence four of 42 U.S.C. § 405(g), the court has power to “enter, upon the pleadings and transcript of the record, a judgment affirming, modifying or reversing the decision of the Commissioner, with or without remanding the cause for a rehearing.” See *Shalala v. Schaefer*, 509 U.S. 292, 296-98 (1993).

The defendant states in its motion for remand that, after additional consideration, further administrative action is necessary in this case. Accordingly, upon order of the court, the agency’s Appeals Council will remand the case to an ALJ for further administrative proceedings, for a *de novo* hearing and a new decision on the plaintiff’s applications for disability insurance benefits and supplemental security income. Exhibits 18F and 19F in the administrative record each pertain to another individual, with the same first name but a different last name, date of birth, and Social Security Number than the plaintiff (Tr. 393-403 (18F), 404-434 (19F)).

Accordingly, on order of the court, the agency’s Appeals Council will remand the case to an ALJ with instructions to conduct a *de novo* hearing, ensuring that each exhibit of record pertains to the correct claimant. The ALJ should ensure that exhibits pertaining to another claimant, numbered as “18F” and “19F” at the June 2010 administrative hearing, are removed from the record and not relied upon as evidence. The

defendant, through attorney Michael S. Howard, has consented to this motion for voluntary remand (m. to remand at 2).

RECOMMENDATION

For the foregoing reasons, it is recommended that the district court grant the Commissioner's consent motion to remand (doc. 20), the Commissioner's decision be reversed, and the case be remanded pursuant to sentence four of 42 U.S.C. § 405 (g) for further administrative action as set forth above.

IT IS SO RECOMMENDED.

s/ Kevin F. McDonald
United States Magistrate Judge

May 16, 2012
Greenville, South Carolina